IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.1031/2002

Sharad Prabhakar
Vs
Shri Hindu Anath Ashram Trust

Date of Order : 10th October, 2006

HON'BLE MR.R.S. CHAUHAN, J.

Mr.Rajat Ranjan, for the appellant.
Mr.M.C. Jain, for the respondent.

By Court:

The defendant-appellant has challenged the order dated 01.05.2002 passed by the Additional District Judge, No.6, Jaipur City, Jaipur whereby the learned Judge has determined the provisional rent under Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (henceforth to be referred to as 'the Act', for short) in favour of the plaintiff-respondent.

The brief facts of the case are that the

plaintiff-respondent had filed a civil suit for eviction and recovery of rent and for permanent injunction against the defendant-appellant. According to the plaint, the plaintiff-respondent is a registered society and Shri Ganganarain Gupta is the President of the Trust. It was alleged that the Ex-President Shri Laxmi Chand Bajaj had rented the premises to the defendant-appellant @ Rs.6,000/- per month, for a period of eleven months. It was further claimed that on 27.05.1997 a rent note was executed between the parties. However, after 27.07.1997, the appellant has failed to pay the rent. Hence, the suit for eviction was filed on the ground of default in payment of the rent.

The appellant while submitting his written statement claimed that on 27.07.1995, he had paid Rs.50,000/- in advance for rent. However, the plaintiff-respondent has shown the said amount as donation. Moreover, on 30.05.1997, another sum of Rs.50,000/- was again deposited by the appellant, but the same has been shown as donation by the plaintiff-respondent. He further contended that he has deposited

Rs.1,80.000/- in the court under Section 19A and 19CC of the Act. The said amount has to be adjusted while determining the rent. However, after hearing both the parties, the learned trial court has determined the rent @ Rs.6,000/- per month, but has not adjusted the amount of Rs.1,00,000/- as prayed by the appellant. Hence, this appeal before this Court.

Mr. Rajat Ranjan, the learned counsel for the appellant, has vehemently argued that in fact, the advance payment for the rent was made by the appellant to the respondent. However, the learned Judge has failed to take note of this fact. Furthermore, according to him, as per Section 9 of the Act, the landlord is prohibited from charging of additional amount as consideration for grant of tenancy, continue or renewal of the tenancy or as if any fine, premium, advance unless same is permissible by or under the provisions of this Act. Moreover, he has contended that on the amount already deposited with the respondent, the learned court has directed the payment of interest by the appellant to the respondent.

On the other hand, Mr. M.C. Jain, the learned counsel for the respondent, has contended that the trial is almost at the end. The evidence has been recorded by the trial court and merely the final judgment needs to be pronounced. This statement made by the learned counsel for the respondent has not been controverted by the learned counsel for the appellant.

We have heard both the counsels for the parties and have perused the impugned order.

The determination of provisional rent under Section 13(3) of the Act is only an interim measure and is not a final determination by any stretch of imagination. At the interim stage the trial court does not hold a mini-trial. At that stage it cannot go into the veracity and validity of a document. Hence, while determining the provisional rent, the trial court could not have expressed a definite opinion about the receipt of payment of Rs.1,00,000/- by the appellant to the respondent. It could do so only after recording the entire evidence on the said point. Moreover, in case more rent amount is paid than is due to the landlord,

under sub-section 8 of Section 13 of the Act, the court is empowered to adjust the same while passing the final judgment and decree. Therefore, even if the contention of the learned counsel is accepted, then the trial court can adjust Rs.1,00,000/- while pronouncing its final decision. Since the rent has been determined only provisionally, this Court is not inclined to interfere with the impugned order. However, we hope, the trial court would deal with the issue whether the payment of Rs.1,00,000/- was by way of donation or by way of advance payment of rent or not while delivering its final judgment. The trial court is directed to delivered its judgment within a period of two weeks from the date of receipt of the certified copy of this order. And till the judgment is delivered within the said period, the order dated 01.05.2002 shall not be acted upon.

With the above directions, this appeal is disposed.

(R.S. CHAUHAN), J.

/S.S./